

TISDALE & ASSOCIATES LLC  
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Steven A. Klenda, Esq.  
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(303) 832-1800

Counsel for NuTech Plastics Engineering, Inc.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re DELPHI AUTOMOTIVE SYSTEMS USA, L.L.C.

Debtor.

Chapter 11  
Case No. 05-44640 (RDD)

(Jointly Administered as  
Case No. 05-44481)

NUTECH PLASTICS ENGINEERING, INC.

Movant,

v.

DELPHI AUTOMOTIVE SYSTEMS USA, L.L.C. dba  
Delphi Automotive Systems, L.L.C.

Respondent.

**NuTech Plastics Engineering, Inc.’s Supplement to Its  
Motion for Relief from the Automatic Stay**

NuTech Plastics Engineering, Inc. (“**NuTech**”) supplements its Motion for Relief from the Automatic Stay to Continue Prepetition Breach-of-Contract Case against Delphi Automotive Systems USA, L.L.C. (“**Debtor**”) and General Motors (Docket No. 4436 – “**Motion**”) as follows:

1. NuTech filed its Motion in order to liquidate its prepetition breach-of-contract and related claims against Debtor and General Motors, which claims were on the very eve of

a jury trial in the Genesee County (Michigan) Circuit Court when Debtor filed its chapter 11 petition.

2. On July 19, 2006 this Court held a preliminary hearing on NuTech's Motion, on the objection thereto filed by Debtor (Doc. 4559), and on NuTech's reply to Debtor's objection (Doc. 4582). At the conclusion of the preliminary hearing, the Court asked the parties to 'at least consider' an order that would allow NuTech to pursue its claims against General Motors in the Michigan trial court and allow this Court to resolve NuTech's claims against Debtor. Doc. 4800, Tr. of Preliminary Hr'g, July 19, 2006, p. 12, ll. 6-13. The Court continued this matter to the August 17<sup>th</sup> omnibus hearing to allow the parties to meet and confer. *Id.* at 13, ll. 1-3.

3. Debtor and NuTech did meet and confer, but disagreed about the scope, effect and intent of the Court's comments. NuTech believed that the Court continued the preliminary hearing in order to allow the parties to consider cooperatively resolving the Motion, while Debtor believed that the Court had denied the Motion and only continued the preliminary hearing to consider the need to depose Mr. Mailey.

4. The parties' disagreement was resolved, at least temporarily, by the submission to this Court of a negotiated form of order, which was signed by the Court on August 17, 2006 (Doc. No. 4952 – "**Order**"), continuing this matter to the September 14<sup>th</sup> omnibus hearing for a final order to the extent that the Court had not earlier resolved NuTech's Motion.

5. The Order confirmed that a "final determination" on NuTech's Motion has not yet been made. NuTech presented this Court's Order to the Michigan trial court in

connection with a motion to set NuTech's claims for trial. A copy of NuTech's motion ("**Setting Motion**") is attached as Exhibit A-1.

6. Through their Michigan trial counsel, Debtor and General Motors jointly filed an answer to the Setting Motion ("**Joint Answer**"), a copy of which is attached as Exhibit A-2. Debtor's and General Motors' Joint Answer serves to underscore why this Court should now grant NuTech's original Motion.

7. Specifically, Debtor's and General Motors' Joint Answer opposed the Setting Motion on the ground that the claims against Debtor and General Motors should be tried together once the automatic stay terminates upon Debtor's emergence from chapter 11 because the facts are "interrelated" and the damages are "interrelated and inseparable":

[NuTech]'s complaint does not state separate causes of actions against Delphi and General Motors. *The facts of the cases are interrelated, and the damage claims against each of these defendants are similarly interrelated and inseparable.* Judge Brown determined and decided that the lawsuits should not be bifurcated, and [NuTech] has set forth no reason that would justify vacating that decision.

Joint Answer, Ex. A-2, ¶ 6 (emphasis added). It is worth repeating that Debtor and General Motors, acting through their common trial counsel less than two weeks ago, emphasized that the Michigan trial court had previously "determined and decided that the lawsuits *should not be bifurcated.*" *Id.* (emphasis added).

8. Thus, Debtor not only acknowledged a preference for trying NuTech's claims against Debtor and General Motors together, but in fact Debtor did so for a reason that NuTech has urged upon this Court in support of its Motion: NuTech's claims against

Debtor and General Motors are interrelated and inseparable.<sup>1</sup>

9. Equally compelling, Debtor's filing of the Joint Answer with General Motors contrasts notably with Debtor's assertions to this Court at the preliminary hearing that Debtor and General Motors would need to retain separate Michigan trial counsel, which purportedly meant that the then-available September date for a trial against both Debtor and General Motors would not be feasible. As the supplemental affidavit of NuTech's trial counsel (Jay Schwartz, Esq.) showed (attached to Doc. No. 4939, and attached hereto as Exhibit B) — at least according to Debtor's trial counsel, Tom Lippert — attorney Lippert had represented *both* Debtor and General Motors in the Michigan case *and would continue to do so*. Debtor's claim that General Motors would have to retain new counsel was instrumental in preventing NuTech from the potential of having its claims tried this September.

10. The Michigan trial court resolved NuTech's Setting Motion by indicating that the first clear trial date on its calendar was in April 2007, but nonetheless set a trial date against General Motors for February 14, 2007 as a back-up for a scheduled trial. In doing so, the Michigan trial court noted that (a) General Motors and Debtor have acknowledged that NuTech's claims against them are "interrelated and inseparable;" and (2) the trial court "would ordinarily try Nu-Tech's claims against [Debtor] and General Motors together because it would be [the] most efficient use of judicial time and resources." Ex. A-3, Order,

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<sup>1</sup>The admitted interrelatedness of NuTech's claims does not mean that any verdict on NuTech's claim against General Motors would necessarily result in a claim against Debtor under the indemnification agreement between General Motors and Debtor. The formal separation of General Motors and Debtor under their spin-off agreement may give General Motors defenses to NuTech's claims that Debtor lacks. In other words, the interrelatedness of NuTech's claims against General Motors and Debtor does not mean that General Motors and Delphi's corresponding defenses are similarly interrelated.

September 11, 2006, unnumbered ¶¶ 2 and 3. In short, NuTech asserts that the Michigan trial court did not as a practical matter accept this Court's approach and therefore it is appropriate and fitting for NuTech to accept "the opportunity to come back and tell [the Court] more about it." Doc. 5069, Tr. of Continued Hr'g, August 17, 2006, p. 14, ll. 14-15.

11. The February 2007 trial date that the Michigan trial court has now set will allow Debtor more than ample "breathing room" from NuTech's claim. Any asserted "distraction" from a case that was on the very eve of trial will be minimal. The business and heavy-lifting of Debtor's chapter 11 case will have been either concluded or nearing completion, as a February 2007 (or, more likely, April 2007) trial will occur either roughly contemporaneously with or just a few months before Debtor's projected exit from chapter 11. Given the admission by Debtor of the interrelatedness of NuTech's claims against Debtor and General Motors, the benefits of a one-trial resolution to judicial efficiency, the balance of the harms, and the eve-of-trial status of NuTech's claims, it makes practical and legal sense to try these cases — which have been pending for almost four years now — together.

12. For these reasons, this Court should now take the opportunity to revisit the preliminary determination in this matter (as stated on the record on July 19, 2006) and rule as a final matter that trial may proceed in the Michigan state court against both General Motors and Debtor in February or April 2007.

WHEREFORE, NuTech respectfully prays that this honorable Court now enter its final order lifting the automatic stay in order to allow NuTech's prepetition case to continue

against both Debtor and General Motors, and granting to NuTech all such other and further relief as is just, proper or appropriate in these premises.

Dated at Denver, Colorado this 12<sup>th</sup> day of September 2006.

Respectfully submitted,

TISDALE & ASSOCIATES LLC

s/Steven A. Klenda  
Douglas M. Tisdale, Esq.  
Steven A. Klenda, Esq.

Attorneys for Movant,  
NuTech Plastics Engineering, Inc.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re  
DELPHI AUTOMOTIVE SYSTEMS USA, L.L.C.  
  
Debtor.

Chapter 11  
Case No. 05-44640 (RDD)  
  
(Jointly Administered as  
Case No. 05-44481)

**Second Supplemental Affidavit of Jay Schwartz in Support  
of NuTech Plastics Engineering, Inc.'s Supplement to its  
Motion for Relief from the Automatic Stay**

I, Jay Schwartz, based on my own personal knowledge, declare that:

1. I am an attorney who is licensed to practice law in Michigan. I graduated from Wayne State University Law School and was admitted to the Michigan Bar in 1991. I have practiced law full time in Michigan since then.
2. I represent NuTech Plastics Engineering, Inc. ("**NuTech**") in Case No. 02-075335, Delphi Automotive Systems USA, L.L.C. and General Motors Corporation, which is pending in the Circuit Court for Genessee County, Michigan ("**NuTech's Case**"). I have represented NuTech in NuTech's Case since its inception. As a result, I am personally familiar with the substance of NuTech's claims in NuTech's case, the procedural background of and developments in NuTech's Case, and how NuTech's Case was and is affected by the chapter 11 bankruptcy petition that Delphi Automotive Systems USA, L.L.C. ("**Debtor**") filed on October 8, 2005.
3. On August 28, 2006, NuTech filed with the Michigan trial court a Motion to Lift Administrative Stay and Schedule Trial (the "**Setting Motion**"). A true and correct copy of this Motion is attached as Exhibit 1. NuTech filed this motion in response to this

Court's August 17, 2006 Order regarding NuTech's Motion for Relief from the Automatic Stay.

4. Debtor and General Motors jointly filed an Answer to the Setting Motion (the "Joint Answer"). A true and correct copy of the Joint Answer is attached as Exhibit 2.

5. On September 6, 2006, the Michigan trial court held a conference call with counsel for General Motors and Delphi (Thomas Lippert, Esq.) and me. During the conference call, the Michigan trial court indicated that its first available trial date was in April 2007. But the Michigan trial court actually set NuTech's Case for trial as a back-up trial to a case that is scheduled to being on February 14, 2007. A true and correct copy of the Michigan trial court's Order Scheduling Trial Against General Motors is attached as Exhibit 3.

Sworn and affirmed by me this 12th day of September 2006.

  
Jay Schwartz, Esq.


STATE OF MICHIGAN )

) ss.

COUNTY OF MACOMB )

SUBSCRIBED AND SWORN to before me this 12th day of September, 2006 by \_\_\_\_\_

My Commission expires: 4-22-2011

  
Notary Public

CHRISTINE L. COE  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MACOMB  
(MY COMMISSION EXPIRES 04/22/2011)  
ACTING IN COUNTY OF OAKLAND, AND



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

NU-TECH PLASTICS ENGINEERING, INC.,

Plaintiff,

v

Case No. 02-075335-CK

Hon. Joseph J. Farah

GENERAL MOTORS CORPORATION,  
a Delaware Corporation, and DELPHI  
AUTOMOTIVE SYSTEMS USA, L.L.C., a  
Delaware Limited Liability Corporation, d/b/a  
DELPHI AUTOMOTIVE SYSTEMS, L.L.C.,

*Motion: September 5, 2006*

*Time: 10:00 a.m.*

Defendants.

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SCHWARTZ LAW FIRM, P.C.

By: Jay A. Schwartz (P45268)

Attorney for Plaintiff

37887 West Twelve Mile Road, Suite A

Farmington Hills, Michigan 48331

(248) 553-9400

LIPPERT, HUMPHREYS, CAMPBELL,

DUST & HUMPHREYS, P.C.

By: A. T. Lippert, Jr. (P16714)

Attorney for Defendant - General Motors

4800 Fashion Square Boulevard, Suite 410

Saginaw, Michigan 48064-2604

(989) 792-2552

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PLAINTIFF'S MOTION TO LIFT  
ADMINISTRATIVE STAY AND SCHEDULE TRIAL

NOTICE OF HEARING

AND

PROOF OF SERVICE

A TRUE COPY  
Michael J. Carr, Clerk

Dated: August 28, 2006

PLAINTIFF'S MOTION TO LIFT  
ADMINISTRATIVE STAY AND SCHEDULE TRIAL

NOW COMES Plaintiff, Nu-Tech Plastics Engineering, Inc., by and through its attorney, Schwartz Law Firm, P.C., and for its Motion to Lift Administrative Stay and Schedule Trial, states:

1. This lawsuit commenced on December 30, 2002.
2. Trial was scheduled for November 22, 2005.
3. On October 8, 2005, Defendant Delphi Automotive Systems filed for Chapter 11 bankruptcy.
4. In November 2005, Defendant General Motors asked the Court to stay the entire case in light of Delphi's bankruptcy proceedings and the automatic stay. This Court (visiting Judge Thomas L. Brown) conducted a pre-trial conference and held that unless Plaintiff immediately dismissed its case against Delphi, the entire case would be stayed. Plaintiff refused to simply dismiss its multi-million dollar claims against Delphi and this case was put on an administrative stay. Exhibit A.
5. On July 3, 2006, Plaintiff petitioned the Bankruptcy Court to lift the automatic stay against Delphi so that it could proceed to trial in this Court against Delphi and General Motors. The Bankruptcy Judge denied the motion but held:

Nothing in the automatic stay under 11 U.S.C. § 362, which arose upon the filing of Debtors' bankruptcy petitions, prevents NuTech from proceeding with its action as against General Motors Corporation in the Genesee County, Michigan Circuit Court, Case No. 02-075335.

Unless otherwise determined by this Court, any claim by NuTech against Delphi Automotive Systems LLC or any other Debtor, if any, shall be liquidated or otherwise determined by this Court.

Exhibit B.

6. In light of the Bankruptcy Court's August 17, 2006 ruling, there exists no reason to continue the administrative stay as it relates to Nu-Tech's claims against General Motors, which claims should be set down for trial as soon as possible.

WHEREFORE, Plaintiff, Nu-Tech Plastics Engineering, Inc., requests that this Honorable Court lift the administrative stay it entered on November 9, 2005, schedule a trial on Plaintiff's claims against Defendant, General Motors Corporation, as soon as possible and grant such further relief as this Court deems just.

SCHWARTZ LAW FIRM, P.C.

By: 

Jay A. Schwartz (P45268)

Attorney for Plaintiff

37887 West Twelve Mile Road, Suite A

Farmington Hills, Michigan 48331

(248) 553-9400

Dated: August 28, 2006

NOTICE OF HEARING

*PLEASE TAKE NOTICE* that Plaintiff's Motion to Lift Administrative Stay and Schedule Trial will be brought on for hearing before the Honorable Joseph J. Farah of the Genesee County Circuit Court, 900 South Saginaw Street, Flint, Michigan, 48502, on the 5<sup>th</sup> day of September, 2006, at 10:00 a.m., or as soon thereafter as counsel may be heard.

SCHWARTZ LAW FIRM, P.C.

By: 


Jay A. Schwartz (P45268)  
Attorney for Plaintiff  
37887 West Twelve Mile Road, Suite A  
Farmington Hills, Michigan 48331  
(248) 553-9400

Dated: August 28, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon A. T. Lippert, Jr., Esq., by mailing the same to by DHL Express - Waybill 17607222850, to his respective address as disclosed by the pleadings of record herein on the 28<sup>th</sup> day of August, 2006.

I declare under penalty of perjury that the statement above is true to the best of my knowledge, information and belief.

  
LYN ZAREM

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

NU-TECH PLASTICS ENGINEERING, INC.,

Plaintiff,

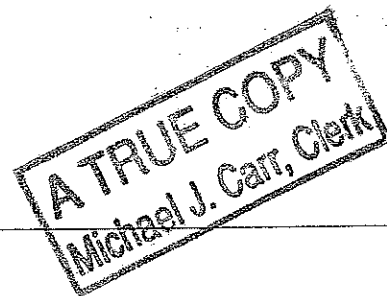
vs.

Case No. 02-075335-CK

GENERAL MOTORS CORPORATION,  
a Delaware Corporation, and DELPHI  
AUTOMOTIVE SYSTEMS USA, L.L.C., a  
Delaware Limited Liability Corporation, d/b/a  
DELPHI AUTOMOTIVE SYSTEMS, L.L.C.

Defendants.

Hon. Thomas L. Brown



---

JAY A. SCHWARTZ (P45268)  
DEBORAH E. FORDREE (P49054)  
SCHWARTZ LAW FIRM, P.C.  
Attorneys for Plaintiff  
37887 W. 12 Mile Road, Suite A  
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A. T. LIPPERT, JR. (P16714)  
LIPPERT, HUMPHREYS, CAMPBELL,  
DUST & HUMPHREYS, P.C.  
Attorneys for Defendants  
4800 Fashion Square Boulevard  
Plaza North, Suite 410  
Saginaw, MI 48604-2604  
(989) 792-2552

JOSEPH E. PAPELIAN (P26582)  
Attorney for Defendant Delphi  
Delphi Automotive Systems  
M/C: 483-400-603  
5725 Delphi Drive  
Troy, MI 48098-2815  
(248) 813-2535

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**ORDER**

The defendant Delphi Automotive Systems, LLC has filed a notice informing the court that the action of the plaintiff against Delphi Automotive Systems, LLC has been stayed in the United States Bankruptcy Court. On November 9, 2005, the court

conferred with counsel by telephone. The court advised counsel that the case against General Motors could proceed if Delphi was dismissed as a defendant. If General Motors and Delphi are retained as defendants the case will be tried when Delphi is discharged from bankruptcy. The plaintiff elected to proceed against both defendants.

Accordingly, IT IS ORDERED that the action against General Motors is stayed until Delphi is discharged from bankruptcy. Thereafter, this case will be scheduled for trial.

**JUDGE THOMAS L. BROWN**  
**P11303**

---

Hon. Thomas L. Brown, Circuit Judge  
Dated: 11/21, 2005

Prepared By:  
A.T. Lippert, Jr. (P16714)  
Lippert, Humphreys, Campbell,  
Dust & Humphreys, P.C.  
4800 Fashion Square Blvd.  
Plaza North, Suite 410  
Saginaw, MI 48604-2604  
(989) 792-2552

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
Debtors.	:	(Jointly Administered)
-----X		

ORDER ON MOTION OF NUTECH PLASTICS ENGINEERING, INC.,  
FOR RELIEF FROM AUTOMATIC STAY

("NUTECH STAY RELIEF ORDER")

Upon the motion, dated July 3, 2006, of NuTech Plastics Engineering, Inc. ("NuTech") for relief from the automatic stay (the "Motion") (Docket No. 4436); and upon the Debtors' objection to the Motion, dated July 14, 2006 (Docket No. 4559); and upon NuTech's reply in support of the Motion, dated July 18, 2006 (Docket No. 4582); and upon the record of the hearing held on the Motion on July 19, 2006; and after due deliberation thereon, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. Nothing in the automatic stay under 11 U.S.C. § 362, which arose upon the filing of the Debtors' bankruptcy petitions, prevents NuTech from proceeding with its action as against General Motors Corporation in the Genesee County, Michigan Circuit Court, Case No. 02-075335.

2. Unless otherwise determined by this Court, any claim by NuTech against Delphi Automotive Systems LLC or any other Debtor, if any, shall be liquidated or otherwise determined in this Court.

9/17

3. In accordance with Rule 27 of the Federal Rules of Civil Procedure, as made applicable by Rules 7027 and 9014(c) of the Federal Rules of Bankruptcy Procedure, and without need for further petition or order, John Mailey is designated as a person whose deposition may be taken by oral examination or written interrogatories on matters relating to claim numbers 871 and 1279 filed by NuTech. The automatic stay is modified to permit the preservation of testimony of John Mailey in accordance with this paragraph.

4. To the extent that the Motion was not determined by the Court at the July 19, 2006 omnibus hearing, the Motion to that extent is continued to the September 14, 2006 omnibus hearing in these cases.

5. Both parties reserve all rights with respect to the effect and conclusiveness of the record of the July 19, 2006 omnibus hearing.

6. Except as modified in this order, the automatic stay is continued in effect pending the conclusion of, or as a result of, the next hearing on the Motion and a determination under 11 U.S.C. § 362(d).

7. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this order.

Dated: New York, New York  
August 17, 2006

/s/Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE



**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

NU-TECH PLASTICS ENGINEERING, INC.,

Plaintiff,

vs.

Case No. 02-075335-CK

GENERAL MOTORS CORPORATION,  
a Delaware Corporation, and DELPHI  
AUTOMOTIVE SYSTEMS USA, L.L.C., a  
Delaware Limited Liability Corporation, d/b/a  
DELPHI AUTOMOTIVE SYSTEMS, L.L.C.

Hon. Joseph J. Farah

Defendants.

---

JAY A. SCHWARTZ (P45268)  
DEBORAH E. FORDREE (P49054)  
SCHWARTZ LAW FIRM, P.C.  
Attorneys for Plaintiff  
37887 W. 12 Mile Road, Suite A  
Farmington Hills, MI 48331  
(248) 553-9400

A. T. LIPPERT, JR. (P16714)  
LIPPERT, HUMPHREYS, CAMPBELL,  
DUST & HUMPHREYS, P.C.  
Attorneys for Defendant Delphi  
4800 Fashion Square Boulevard  
Plaza North, Suite 410  
Saginaw, MI 48604-2604  
(989) 792-2552

JOSEPH E. PAPELIAN (P26582)  
Attorney for Defendant Delphi  
Delphi Automotive Systems  
M/C: 483-400-603  
5725 Delphi Drive  
Troy, MI 48098-2815  
(248) 813-2535

---

**ANSWER TO MOTON TO LIFT ADMINISTRATIVE STAY  
AND SCHEDULE TRIAL**

The defendants, General Motors Corporation and Delphi Automotive Systems, by its attorney, Lippert, Humphreys, Campbell, Dust & Humphreys, P.C., states the following as its response to plaintiff's motion to lift administrative stay and schedule trial:

1. The allegations in paragraph 1 are admitted.

2. The allegations in paragraph 2 are admitted.

3. The allegations in paragraph 3 are admitted.

4. The allegations in paragraph 4 are incorrect. Counsel for General Motors did not ask "the court to stay the entire case in light of Delphi's bankruptcy proceedings and automatic stay" as alleged in paragraph 4. General Motors' counsel advised the Honorable Thomas L. Brown in a letter dated November 3, 2005 that an automatic stay of all legal proceedings against Delphi was in effect. The court was also advised that the stay did not affect General Motors. A copy of the letter is attached as Exhibit A.

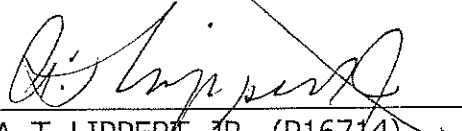
Judge Brown advised plaintiff's counsel if the civil action against Delphi was dismissed, the General Motors case would be tried as scheduled. Plaintiff's counsel did not agree to the dismissal of the civil action against Delphi.

5. The allegations in paragraph 5 are admitted.

6. The allegations in paragraph 6 are denied. The civil action against Delphi is stayed from the bankruptcy proceeding. However, when the Chapter 11 proceedings are concluded the stay will be lifted and the case can be tried. The plaintiff's complaint does not state separate causes of actions against Delphi and General Motors. The facts of the cases are interrelated, and the damage claims against each of these defendants are similarly interrelated and inseparable. Judge Brown determined and decided that the lawsuits should not be bifurcated, and the plaintiff has set forth no reason that would justify vacating that decision.

LIPPERT, HUMPHREYS, CAMPBELL,  
DUST & HUMPHREYS, P.C.  
Attorneys for Defendants, Delphi


Dated: August 30, 2006.

By:   
A. T. LIPPERT, JR. (P16714)  
4800 Fashion Square Blvd.  
Plaza North, Suite 410  
Saginaw, MI 48604-2604  
(989) 792-2552

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing document was served upon the attorneys of record of all parties in the above cause by mailing same to them at their respective business addresses as disclosed by the pleadings of record herein with postage fully prepaid thereon on August 30, 2006.

BY: ☒ U.S. Mail ☐ FAX  
☐ Hand Delivered ☐ FedEx  
☐ Overnight Courier ☐ Other

Signature:   
Karen K. Pietrzak

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

NU-TECH PLASTICS ENGINEERING, INC.,

Plaintiff,

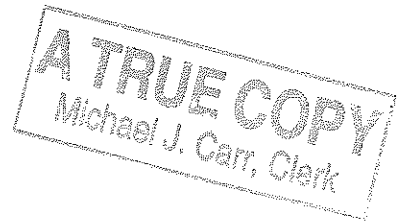
v

Case No. 02-075335-CK

Hon. Joseph J. Farah

GENERAL MOTORS CORPORATION,  
a Delaware Corporation, and DELPHI  
AUTOMOTIVE SYSTEMS USA, L.L.C., a  
Delaware Limited Liability Corporation, d/b/a  
DELPHI AUTOMOTIVE SYSTEMS, L.L.C.,

Defendants.



---

SCHWARTZ LAW FIRM, P.C.  
By: Jay A. Schwartz (P45268)  
Attorney for Plaintiff  
37887 West Twelve Mile Road, Suite A  
Farmington Hills, Michigan 48331  
(248) 553-9400

LIPPERT, HUMPHREYS, CAMPBELL,  
DUST & HUMPHREYS, P.C.  
By: A. T. Lippert, Jr. (P16714)  
Attorney for Defendant - General Motors  
4800 Fashion Square Boulevard, Suite 410  
Saginaw, Michigan 48064-2604  
(989) 792-2552

---

ORDER SCHEDULING TRIAL AGAINST GENERAL MOTORS

*At a session of said Court held in the City of Flint,  
County of Genesee, State of Michigan,*

ON: \_\_\_\_\_

*PRESENT: HON. JOSEPH J. FARAH  
CIRCUIT JUDGE*

This matter comes before the Court on the motion of Nu-Tech Plastics Engineering, Inc. ("Nu-Tech") to lift the administrative stay and schedule a trial. The Court has read Nu-Tech's motion (including the August 17, 2006 Order of the United States Bankruptcy Court for the

District of New York with respect to Nu-Tech's motion for relief from the automatic stay), the joint answer of Defendants General Motors and Delphi to the motion, the record concerning this Court's predecessor's (Thomas L. Brown's) decision to administratively stay this case and the relevant portion of the record in this case. This Court also conducted a conference call with counsel for all of the parties on September 5, 2006 and is otherwise sufficiently advised in their premises.

Judge Brown administratively stayed this case in November 2005 in response to Delphi's bankruptcy filing because Nu-Tech declined his invitation to dismiss its claims against Delphi and proceed to trial against General Motors alone. Nu-Tech elected to continue against both Defendants because, as Delphi and GM acknowledge in response to this motion, Nu-Tech's liability and damage claims against Delphi and GM are interrelated and inseparable.

This Court would ordinarily try Nu-Tech's claims against Delphi and General Motors together because it would be most efficient use of judicial time and resources. However, the automatic stay with respect to Delphi remains in effect pending "a determination under 11 U.S.C. §362(d)" as to whether the stay should continue at this time. While the bankruptcy stay is in place, the stay precludes this Court from acting further in the NuTech action against Delphi. The stay does not preclude this Court from proceeding in the NuTech action against General Motors and conducting such proceedings, including a trial, as this Court finds appropriate.

The Court recognizes that the long – standing travel plans of Nu-Tech's counsel precludes holding a trial date at the first available time in mid-December, and the Court has two significant and lengthy trials that will thereafter occupy its trial calendar until April 2007. Accordingly, and with the understood agreement of General Motor's counsel:

IT IS HEREBY ORDERED that Nu-Tech's civil action against General Motors is set for a

1 week jury trial commencing on the Court's first available date after April 1, 2007.

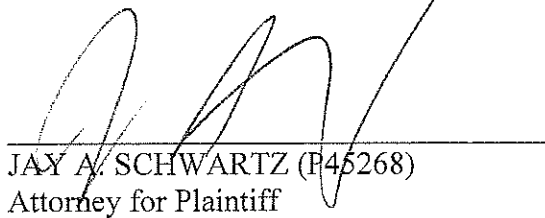
*February 14, 2007 at 8:30 but only as the back-up trial to Parker Vs Quaker Chemical*

JOSEPH J. FARAH  
P-30439

CIRCUIT COURT JUDGE

*9/11/06*

APPROVED AS TO FORM ONLY:

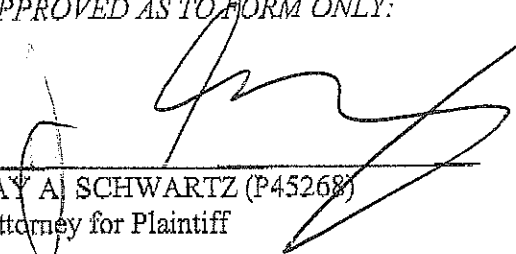
  
JAY A. SCHWARTZ (P45268)  
Attorney for Plaintiff

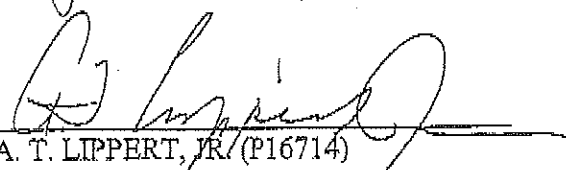
*A. T. Lippert Jr. (see attached)*  
A. T. LIPPERT, JR. (P16714)  
Attorney for Defendant - General Motors

*IT IS HEREBY ORDERED* that Nu-Tech's civil action against General Motors is set for a  
1 week jury trial commencing on the Court's first available date after April 1, 2007.

CIRCUIT COURT JUDGE

*APPROVED AS TO FORM ONLY:*

  
\_\_\_\_\_  
JAY A. SCHWARTZ (P45268)  
Attorney for Plaintiff

  
\_\_\_\_\_  
A. T. LIPPERT, JR. (P16714)  
Attorney for Defendant - General Motors

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re DELPHI AUTOMOTIVE SYSTEMS USA, L.L.C.

Debtor.

Chapter 11  
Case No. 05-44640 (RDD)

(Jointly Administered as  
Case No. 05-44481)

**Supplemental Aff. of Jay Schwartz in Support of  
NuTech Plastics Engineering, Inc.'s  
Motion for Relief from the Automatic Stay (Doc. No. 4436)**

I, Jay Schwartz, based on my own personal knowledge, declare that:

1. I am an attorney who is licensed to practice law in Michigan. I graduated from Wayne State University Law School and was admitted to the Michigan Bar in 1991. I have practiced law full time in Michigan since then.
2. I represent NuTech Plastics Engineering, Inc. ("**NuTech**") in Case No. 02-075335, Delphi Automotive Systems USA, L.L.C. and General Motors Corporation, which is pending in the Circuit Court for Genessee County, Michigan ("**NuTech's Case**"). I have represented NuTech in NuTech's Case since its inception. As a result, I am personally familiar with the substance of NuTech's claims in NuTech's case, the procedural background of and developments in NuTech's Case, and how NuTech's Case was and is affected by the chapter 11 bankruptcy petition that Delphi Automotive Systems USA, L.L.C. ("**Debtor**") filed on October 8, 2005.
3. In Nutech's case, GM was represented by separate counsel until December 11, 2003, when the Michigan state court approved a Stipulation and Order that substituted Mr.



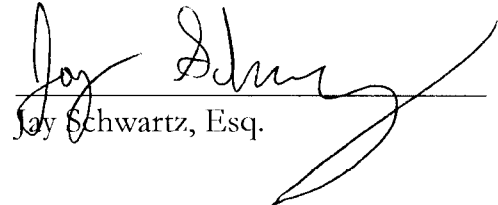
Lippert for GM's exiting counsel. A true and correct copy of this Stipulation and Order is attached as Exhibit 1.

4. I have known Mr. Lippert for 4 years. I have a cordial and professional relationship with him. From working with him over the years, I would characterize him as a "straight shooter." On August 14, 2006, I spoke with Mr. Lippert by telephone. During our conversation, Mr. Lippert stated that: (a) he represents GM in NuTech's case; (b) he will be defending GM as its trial counsel in NuTech's case against GM; (c) Debtor is contractually required to defend GM against NuTech's claims; and (d) after reading the transcript from the last bankruptcy hearing, he clarified for Debtor's bankruptcy counsel that he will be representing GM as trial counsel in NuTech's case against GM. Mr. Lippert also stated that he has been in direct contact with Delphi's Assistant General Counsel, Joseph E. Papelian, regarding these facts and issues.

5. As a result of my 15 years of practicing law in Michigan, I am personally familiar with the procedures that the Genessee County Circuit Court (the court in which NuTech's Case is pending), and Michigan trial courts in general, use to assign trial dates for cases and how the time that a civil case has been pending affects the priority it receives for being scheduled for trial and for actually being tried. The Michigan Supreme Court requires each trial court judge to report to them on a quarterly basis all civil cases that are more than 2 years old and the reasons why they remain pending. In practice, these reporting requirements cause trial courts to prioritize the trial of those cases that have been pending the longest.

6. Because the automatic stay was not lifted at the July omnibus hearing, I believe that, even with the priority that the Genesee county Circuit Court will give to NuTech's case, the Court's docket will prevent NuTech from obtaining a trial date before January 2007.


Sworn and affirmed me this 16<sup>th</sup> day of August 2006.

  
Jay Schwartz, Esq.

STATE OF MICHIGAN                    )  
  ) ss.  
COUNTY OF Oakland                )

SUBSCRIBED AND SWORN to before me this 16 day of August,  
2006 by Jay Schwartz

My Commission expires: 4-7-12

  
Notary Public

Notary Public, State of Michigan  
County of Wayne  
My Commission Expires Apr. 7, 2012  
Acting in the County of Oakland

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

NU-TECH PLASTICS ENGINEERING, INC.,

Plaintiff,

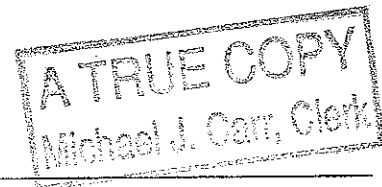
vs.

Case No. 02-075335-CK

GENERAL MOTORS CORPORATION,  
a Delaware Corporation, and DELPHI  
AUTOMOTIVE SYSTEMS USA, L.L.C., a  
Delaware Limited Liability Corporation, d/b/a  
DELPHI AUTOMOTIVE SYSTEMS, L.L.C.

Hon. Robert M. Ransom

Defendants.



JAY A. SCHWARTZ (P45268)  
DEBORAH E. FORDREE (P49054)  
SCHWARTZ LAW FIRM, P.C.  
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WILLIAMS ACOSTA PLLC  
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JOSEPH E. PAPELIAN (P26582)  
Attorney for Defendant Delphi  
Delphi Automotive Systems  
M/C: 483-400-603  
5725 Delphi Drive  
Troy, MI 48098-2815  
(248) 813-2535

**STIPULATION AND ORDER FOR SUBSTITUTION OF COUNSEL**

The defendants General Motors Corporation and Delphi by their respective counsel agree, pursuant to MCR 2.117(C)(2), that the law firm of Lippert, Humphreys,

12/11

Campbell, Dust & Humphreys, may be substituted as counsel for defendant General Motors Corporation and the appearance of WILLIAMS ACOSTA PLLC may be withdrawn.

Dated: December 2, 2003

WILLIAMS ACOSTA PLLC  
Attorneys for Defendant, G.M.

By: [Signature]  
VICTOR TORRES (P43240)  
660 Woodward Avenue  
Suite 2430  
Detroit, MI 48226  
(313) 963-3873

Dated: December 8, 2003.

LIPPERT, HUMPHREYS, CAMPBELL,  
DUST & HUMPHREYS, P.C.  
Attorneys for Defendants, Delphi

By: [Signature]  
A. T. LIPPERT, JR. (P16714)  
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Plaza North, Suite 410  
Saginaw, MI 48604-2604  
(989) 792-2552

ORDER

IT IS SO ORDERED.

ROBERT M. RANSOM  
P-19226  
HONORABLE ROBERT M. RANSOM  
Dated: 12/11/07

Prepared By:  
A.T. LIPPERT, JR. (P16714)  
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